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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1940

No. 143

F. C. CROW, T. J. GOURLEY AND W. H. MURPHY, CONSTITUTING THE ARKANSAS STATE BOARD OF CHIROPRACTIC EXAMINERS, ET AL.,

Appellants,

vs.

H. A. STROUD, M. C. HAWKINS, JR., T. J. STEWART, ET AL.

APPEAL FROM THE SUPREME COURT OF THE STATE OF ARKANSAS.

STATEMENT OF JURISDICTION.

(Filed in Arkansas Supreme Court April 12, 1940.)

This case is one in which the validity of an act of the State of Arkansas, to-wit, Act No. 148, Vol. 1, page 742, of the Legislative Acts of Arkansas of 1929, approved March 14, 1929, known as the Basic Sciences Act, now Sections 10795 *et seq.* of Pope's Digest of the Statutes of Arkansas,

as construed by the Supreme Court of the State of Arkansas, was drawn in question upon the ground that said statute is repugnant to Section 1 of the 14th Amendment to the Constitution of the United States. The final decision of the Supreme Court of the State of Arkansas, the court of last resort in all causes in the State of Arkansas, in which a decision could be had, is in favor of the validity of said statute.

The applicable portions of said statute are sections "1", (Sec. 10795, Pope's Digest) and "18" (Sec. 10812, Pope's Digest) of said Act 148, which sections read as follows:

Section 1 of Act (Sec. 10795, Pope's Digest):

> "Basic Science certificate required. No person shall be eligible for examination or permitted to take an examination for a license to practice the healing art, or any branch thereof, or granted any such license, unless he has presented to the licensing board or officer empowered to issue such a license, a certificate of ability in anatomy, physiology, chemistry, bacteriology and pathology (hereinafter referred to as the basic sciences), issued by the State Board of Examiners in the basic sciences."

Section 18 of Act (Sec. 10812, Pope's Digest):

> "Exceptions. This act shall not be construed as applying to dentists, nurses, midwives, optometrists, chiropodists, barbers, cosmeticians or Christian Scientists, practicing within the limits of their respective callings; nor to other persons licensed to practice the healing art or any branch thereof in this State when this Act takes effect; nor to persons specifically permitted by law to practice without licenses, practicing within the limits of the privileges thus granted them; nor to the sale, manufacture, or advertising of drugs, medicines, household remedies, chemicals, and household preparations, provided that the vendor, maker or advertiser refrains from any attempt to diagnose."

(Note. Other sections of the Act in question define "the healing art", provide for a Board of Examiners,

for fees, dates of examinations, requirements as to age, character and other training of applicants, reciprocity, etc., but these sections *in extenso* are not deemed material here.)

Therefore, in accordance with the rules of the Supreme Court of the United States (Paragraph 2 of Rule 46), and with the statutes in such cases made and provided (Section 344, Title 28, U. S. C. A.), petitioner respectfully shows unto this Court that the case is one in which, under the legislation in force when the act of January 31, 1928 (45 Stat. L. 54), as amended by the Act of April 26, 1928, (Ch. 440, 45 Stat. 466), was passed, to-wit, under Section 237, (a) of the Judicial Code (Section 344, 28 U. S. C. A.), a review could be had in the Supreme Court of the United States on a writ of error as a matter of right.

The said Supreme Court of Arkansas, the court of last resort in all causes in the State of Arkansas, rendered its decision herein on January 15, 1940, and made the same final on March 11, 1940, on entering its order denying a petition for rehearing, and reversed the decree of the Chancery Court of Pulaski County, Arkansas, for the reasons, and upon the grounds, stated in the opinion of said Supreme Court, a copy of the decree of said Chancery Court being attached hereto as Exhibit "A", and made a part hereof, and a copy of the opinion of the Supreme Court of the State of Arkansas being attached hereto as Exhibit "B" and made a part hereof.

The opinion of the said Supreme Court of the State of Arkansas has not yet been officially reported, but is unofficially reported in 136 S. W. (2d) 1025.

The final order of reversal by the Supreme Court of the State of Arkansas was entered in the office of the Clerk of said Court on March 11, 1940.

The contention of appellants (defendants in the State court of first resort, and appellees in the Supreme Court of

the State of Arkansas) is that, by requiring of them proficiency in bacteriology and pathology, two difficult and intricate subjects, forming the basis of the medical science, to acquire proficiency in which would require from six to eight years of school training, which subjects bear no reasonable or just relation to their profession, their right to engage in the practice of their profession is, for all practical purposes, abridged, and, in fact, completely destroyed, and that, by requiring of them proficiency in said subjects, which they neither use nor need, and not requiring proficiency of dentists and others therein, who do need and use such knowledge, an arbitrary and unreasonable classification is created which denies to them the equal protection guaranteed by the constitution; and it is believed the question presented is substantial by reason of the fact that the long period of time required to acquire proficiency in the two subjects named would have the practical effect of precluding all chiropractors from engaging in the practice of their profession in the State of Arkansas, and would destroy rights acquired in good faith over a long period of time and without objection on the part of appellees herein. No issue of fact is involved, the case being presented on undisputed evidence on behalf of appellants.

Cases believed to sustain the jurisdiction of this Court are:

Dent v. *West Virginia*, 129 U. S. 114, 32 L. Ed. 623;

Nicol v. *Ames*, 173 U. S. 509, 43 L. Ed. 786;

Connally v. *Union Sewer Pipe Co.*, 184 U. S. 540, 46 L. Ed. 679;

Southern Ry. Co. v. *Greene*, 216 U. S. 400, 54 L. Ed. 536;

Jeffery Mfg. Co. v. *Blagg*, 235 U. S. 571, 59 L. Ed. 364;

Mallinckrodt Chem. Wks. v. *Missouri*, 238 U. S. 41, 59 L. Ed. 1192;

A., T. & S. F. R. R. Co. v. *Vosburg*, 238 U. S. 56, 59 L. Ed. 1199;

Maxwell v. *Buzbee*, 250 U. S. 525, 63 L. Ed. 1124;
F. S. Royster Guano Co. v. *Virginia*, 253 U. S. 412, 64 L. Ed. 989.

The Federal question here urged was first presented in the Chancery Court of Pulaski County, Arkansas, the State court of first instance, by pleading the same in the answer (R. 5) interposed, pertinent portions of said answer being:

> "Defendants say that said Basic Science Act is without application to the practice or the licensing to practice the art of chiropractic, and * * * that, in so far as said Basic Science Act attempts to regulate the licensing or practicing of chiropractic, it is void, and that the terms thereof are in violation of * * * Amendments V and XIV of the Constitution of the United States, and that the subjects in which an examination is required to be conducted under said Basic Science Act are not requisite, necessary, or connected with, the practice of chiropractic, and would constitute an unreasonable and unconstitutional interference with the right to practice chiropractic."

The Federal question here sought to be reviewed was preserved and raised in the Supreme Court of the State of Arkansas by the above pleadings and by assignment of error (R. 23) based thereon, pertinent portions thereof being:

> "That the exemption of the profession of dentists, nurses, midwives, optometrists, chiropodists and cosmeticians, from the provisions of said Act, and the unreasonable and arbitrary inclusion of chiropractic, has the effect of depriving appellees of property without due process of law, * * * and constitutes a denial to the appellees of due process and equal protection of the laws, and an abridgment of the privileges and immunities accorded the appellees by amendment XIV to the Constitution of the United States."

Respectfully submitted,

EDWARD H. COULTER,
Attorney for Appellants.

EXHIBIT "A".

(Caption and Title Omitted.)

DECREE.

(Filed in Pulaski Chancery Court, June 22, 1939.)

On this day comes on to be heard the above entitled cause, Peter A. Deisch, and the Defendants by their Solicitors, W. R. Donham and E. R. Parham, and both parties announcing ready for trial and the same being submitted to the Court for its consideration and judgment upon the Amended Complaint, the Answer thereto and the testimony of Dr. L. M. Hill, Dr. W. H. Murphy, Dr. T. J. Gourley, H. D. Ferguson and Dr. A. T. McMillen, The Court, being well and sufficiently advised as to all matters of fact and law arising herein, doth order, adjudge and decree that Plaintiffs' Complaint be dismissed for want of equity.

To which Plaintiffs except and pray an appeal to the Supreme Court of Arkansas, which is hereby granted.

EXHIBIT "B".

OPINION OF THE SUPREME COURT OF ARKANSAS.

(Filed January 15, 1940.)

McHANEY, *J.*:

Appellants are the executive board of the Arkansas Medical Society. Appellees are the members of the State Board of Chiropractic Examiners, except that appellees M. L. Evans and C. R. Ernest, are individuals engaged in the chiropractic practice in the city of Little Rock. Appellants brought this action against appellees, in their official capacity, and also as individual medical practitioners duly licensed and practicing under the laws of Arkansas, and for the benefit of all others similarly situated to enjoin the appellees, members of the State Board of Chiropractic Ex-

aminers and their successors in office, from issuing licenses or permitting applicants for license to take examinations before said board until a basic sciences certificate is first presented, as, it is alleged, is required by act 147 of 1929, and to enjoin said Evans and Ernest from continuing the practice of chiropractic in this state under authority of licenses issued to them, which were issued after the enactment of said act 147 and without complying with its terms. Appellees defended the action on the grounds of a general denial of the allegations of the complaint; that the Basic Sciences Act is not applicable to the practice, or the licensing to practice, of the chiropractic art; that in so far as it attempts to regulate the licensing or practice of chiropractic it is unconstitutional and void under both the state and federal constitutions, in that the subjects in which an examination is required by said act are not requisite, necessary nor connected with such practice, thereby constituting an unreasonable and unconstitutional interference with the right to practice chiropractic.

Trial resulted in a decree dismissing appellants' complaint for want of equity and they have appealed.

There has long been in this state a State Board of Chiropractic Examiners. Such a board was created by act 126 of the acts of 1915, p. 485. By Section 4 of this act, said board was required to examine applicants in the following subjects: "Chiropractic—anatomy, physiology, symptomotology, chemistry, hygiene, chiropractic principles and diagnosis." In 1921, by act 485, the legislature amended said act 126 of 1915 in certain respects and among others added that an applicant for examination should possess certain educational requirements and must be a graduate of a reputable college of chiropractic, having a "resident" course of not less than three years, in the subjects listed above. Section 2 of this amendatory act gave the board the power to revoke the license of any practitioner in this state for "prescribing any form of medical treatment without having first complied with the law governing the practice of medicine, or any method which is not chiropractic."

The legislature of 1929 enacted act 147, p. 731, the short title of which is the Basic Sciences Act of 1929. Sections 1 and 2 of said act are as follows: Section 1. "No person

shall be eligible for examination or permitted to take an examination for a license to practice the healing art, or any branch thereof, or granted any such license, unless he has presented to the licensing board, or officer empowered to issue such a license, a certificate of ability in anatomy, physiology, chemistry, bacteriology and pathology (hereinafter referred to as the basic sciences) issued by the state board of examiners in the basic sciences." Section 2: "For the purpose of this act, any license authorizing the licentiate to offer or undertake to diagnose, treat, operate on, or prescribe for any human pain, injury, disease, deformity or physical or mental condition is a license to practice the healing art."

Thus it will be seen that the Basic Sciences Act requires an examination before the board therein created in five subjects, called the "Basic Sciences," two of which, bacteriology and pathology, are not mentioned in the subjects required by the above mentioned chiropractic acts. By Section 19 of said act it is provided that: "No provision of this act shall be construed as repealing any statutory provision in force at the time of its passage with reference to the requirements governing the issuing of licenses to practice the healing art or any such branch thereof; but any board authorized to issue licenses to practice the healing art or any branch thereof may, in its discretion, accept certificates issued by the Board of Examiners in the Basic Sciences in lieu of examining applicants in such sciences or may continue to examine applicants in such sciences as heretofore. The unconstitutionality of any part of this act shall not be construed as invalidating any other part thereof." Section 18 provides that the act shall not apply to "dentists, nurses, midwives, optometrists, chiropodists, barbers, cosmeticians or christian scientists, practicing within the limits of their respective callings." Certain others are excepted from the provisions of the act, including those then licensed to practice the healing art or any branch thereof. (Corresponding sections of Pope's Digest to the sections of the acts above mentioned will be inserted by the reporter in a footnote.)

The trial court made no specific findings, but simply dismissed the complaint for want of equity. To sustain

the decree, appellees say that, in the practice of chiropractic in Arkansas, "such subjects as bacteriology and pathology were not essential to, were not permitted and were not related to or connected with that practice." And that the testimony of certain chiropractic practitioners showed conclusively that such practice in Arkansas "consisted solely in locating the nerve pressure of the spinal column and making proper adjustments to relieve that pressure and nothing else." It is also said that the evidence shows that such a practitioner does not "attempt or purport to diagnose any disease, to treat any disease, or to engage in any method which would in the remotest degree be connected with or concerned with the subjects of bacteriology and pathology." Bacteriology is defined by Webster as "The science which deals with the study of bacteria. It is a branch of botany, but some of its most important practical relations are with hygiene, medicine and agriculture." Pathology is defined as "The science treating of diseases, their essential nature, causes and development, and the structural and functional changes produced by them." The legislature thought it proper that all persons seeking license to practice the healing art should have a knowledge of these subjects, and we cannot say their inclusion as to chiropractic was unreasonable, arbitrary and without any relation to such practice. Certainly bacteriology has some relation to such practice, since "some of its most important practical relations are with hygiene," a subject upon which such a practitioner must take an examination under the chiropractic acts of 1915 as amended by the act of 1921, above mentioned. It is said that a chiropractor does not treat diseases, and therefore, pathology has no relation. If he does not treat diseases, what does he treat? Does he manipulate the vertebrae of a well person just for the pleasure of such well person? There would be no excuse for any regulatory chiropractic laws, if they were not engaged in treating disease. In a case cited and relied on by appellees, *State* v. *Gallagher*, 101 Ark. 593, 143 S. W. 98, a case decided in 1912, before the first regulatory act on the subject, this court recognized at that time that such practice was the treatment of disease. The court said:

"The practice of chiropractics, as defined, understood and used in the treatment of ailments of the body, is not included in the definition of the practice of medicine in said statute, and not limited by it to those only who have procured certificates in accordance with said act." The "treatment of ailments of the body" is necessarily the treatment of diseases. The Basic Sciences Act uses the words "treat * * * any human pain, injury, disease," Section 2, and we are, therefore, of the opinion that said act applies to appellees and that persons practicing chiropractic are engaged in the practice of the healing art, as defined in said act, and that applicants for license must take the examination before the Basic Sciences Board of Examiners, before they are eligible for examination before the chiropractic board. As said by Mr. Justice Stone of the Supreme Court of Minnesota, in the case of *State, ex rel. Shenk* v. *State Board of Examiners in the Basic Sciences et al.*, 250 N. W. (Minn.) 353: "Too plain is the legislative purpose to sweep within the law every practitioner of healing, not as previously defined by law, but as defined 'by this act'."

The Basic Sciences Act of 1929 does not repeal, amend or modify any preexisting law relating to examination of applicants to practice the healing art, but is an additional requirement, a prerequisite to be complied with before taking such examinations. These laws remain in full force and effect, but with the super-imposed requirements of said act.

Nor can we agree with appellees that the Basic Sciences Act of 1929 is unconstitutional. We again quote from Judge Stone in the Minnesota Case, *supra*, the following: "There is claim for petitioner that the basic science law is unconstitutional because abridging his privileges and denying him due process and equal protection of the law. The point is without merit. * * * The law does not ban naturopathy. It does regulate it. We are not interested in the extent to which the medical profession may have sponsored the law, nor their motive in doing so. It is enough that, since the days of Hippocrates, through those of Galen, Vesalius and their modern successor anatomists,

there has been great progress and splendid accomplishment in their science, and the related arts of diagnosis and treatment. Lawmakers everywhere have taken note and have been doing so for a century or more. They began by laws facilitating the procuring of human bodies for dissection. Thereby doctors and their students were enabled to transfer their patronage from grave robbers, "body snatchers," to legitimate purveyors of cadavers. Other laws, regulatory and otherwise, followed. Finally came the restrictive regulation, through licensing, now familiar everywhere. The basic science statute is the latest addition thereto. It departs somewhat from the older definition of the practice of medicine. Of its newer and broader category of the practice of healing, naturopaths have no complaint on constitutional grounds. * * * Nothing has been brought to our attention to enable us to override the legislative judgment either as to the reasonableness of its regulation or the classification of the basic sciences."

What was said in that case applies with more force here because of the difference between a neuropath and a chiropractor. Nor can we say that because dentists and others are excepted from the provisions of the act, the legislature made an arbitrary classification of those to whom it applies and excluded others of the same class. Acts of the legislature are presumed to be valid, and they will not be stricken down unless contrary to some express or necessarily implied provision of the constitution.

We, therefore, hold that the learned trial court erred in dismissing the complaint. The judgment will be reversed and the cause remanded with directions to grant the relief prayed.